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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Amendment of 47 C.F.R. §§ 1.1200 )  
et seq. Concerning Ex Parte )  
Presentations in Commission )  
Proceedings )

GC Docket No. 95-21

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COMMENTS OF SYMBOL TECHNOLOGIES, INC.

Symbol Technologies, Inc. ("Symbol") files these Comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1/</sup> These Comments address only paragraphs 44-45 of the Notice, concerning disclosure requirements after an oral presentation in a permit-but-disclose proceeding. Symbol expresses no views on other issues raised in this proceeding.

**A PARTY DISCLOSING AN ORAL PRESENTATION IN A PERMIT-BUT-DISCLOSE PROCEEDING SHOULD BE PERMITTED TO REFER TO SPECIFIC PRIOR FILINGS MADE BY THE SAME PARTY IN THE SAME DOCKET.**

Symbol agrees with the Commission that the existing rule on disclosure of oral ex parte presentations is vulnerable to abuse.<sup>2/</sup> That rule limits the disclosure requirement to "data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding."<sup>3/</sup> Many ex parte filings disclose only that "XYZ

<sup>1/</sup> Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-21, Notice of Proposed Rulemaking, FCC 95-52 (released Feb. 7, 1995) ("Notice").

<sup>2/</sup> Notice at ¶ 44.

<sup>3/</sup> 47 C.F.R. § 1.1206(a)(2).

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Corporation discussed positions previously filed," or the equivalent. In a voluminous proceeding, such a filing does not satisfy the goal of substantive disclosure. Worse, where the positions of the parties change over time, an unspecific reference to previous filings may be ambiguous.

The Commission's proposal would address the problem by requiring post-presentation disclosures to include "a concise summary of the entire content of the presentation, including the issues discussed, the positions taken, and all arguments and data presented."<sup>4/</sup> While such a rule would go a long way toward eliminating the problem of unhelpful and ambiguous filings, it would do so at the cost of substantially increased and repetitive paperwork.

In a moderately complex proceeding, an interested party to a rulemaking might typically attempt to schedule two or three rounds of meetings, each involving a dozen or more Commissioners and staff members, and in addition might make a few dozen telephone calls to Commission personnel. Often these communications largely repeat the positions previously set out in the party's comments. The proposed rule would require these positions to be restated in the disclosure following each meeting or phone call -- a highly repetitive exercise. All told, the volume of ex parte filings from a single party could easily amount to several hundred pages, most of which would simply reiterate the same positions.

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<sup>4/</sup> 47 C.F.R. 1.1206(d)(2) (proposed).

This development would have at least three adverse effects. First, the cost of preparing ex parte filings would increase substantially, perhaps enough to discourage some smaller entities from taking an active part in Commission proceedings. Second, the need to store, index, manage, and retrieve the added paper would strain the resources of both the Commission and participating entities. Third, for an affected party to stay abreast of a proceeding -- a central purpose of the disclosure rules -- would become much more expensive, because the time required to review other parties' ex parte filings would increase sharply.

Symbol believes that the Commission's goals of meaningful disclosure can be achieved without incurring these disadvantages. Symbol suggests that parties be permitted to refer to their own prior filings in the same docket by date, with enough specificity to permit easy identification of the information referred to. The following form of disclosure, for example, would be permissible:

XYZ Corporation reiterated the views it expressed in its Comments in this proceeding (filed March 16, 1995, pages 8-12) and its Reply Comments (filed March 31, 1995, pages 3-6).

Such a disclosure could also refer to prior ex parte disclosures. Symbol urges, however that a party not be permitted to "nest" incorporations by reference: A document incorporated by reference should not, in turn, incorporate another document by

reference. Each disclosure should cite anew all of the prior filings it relies on.

The following language would implement the proposed change. Shown here is the Commission's proposed Section 1.1206(d)(2), with added text underlined:

(2) Oral presentations. A person who makes an oral ex parte presentation subject to this section shall, within three days of the presentation, submit to the Commission's Secretary, with copies to the Commissioners or Commission employees involved, an original and one copy of a memorandum containing a concise summary of the entire content of the presentation, including the issues discussed, the positions taken, and all arguments and data presented. Where some or all of the information required to be disclosed has been previously filed by the same person in the same proceeding, the memorandum may cite that filing by date and identify the specific information referred to, for example by page number. The memorandum (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that an original and one copy have been submitted to the Secretary, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies of the memorandum (or the original and one copy) shall be filed for each proceeding. If a Commissioner or Commission employee involved in the presentation believes that the memorandum does not adequately describe the presentation, he or she may request that the person file a supplemental memorandum or may file a memorandum for the record him- or herself.

Symbol believes that this change will help to stanch the flood of paper threatened by the Commission's proposal without unduly hindering its underlying goals.

**CONCLUSION**

Symbol asks the Commission to amend its proposed Section 1.1206(d)(2) on disclosure statements in permit-but-disclose proceedings to permit parties to incorporate by reference prior filings made by the same party in the same proceeding.

Respectfully submitted,

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